IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MFA.No. 33 of 2003()

OPMV.1148/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: PETITIONER

K.RAJAMMA, AGED 59 YEARS, WIFE OF
BALAKRISHNAN NAIR, PADINJARE KANNETH,
KANDATHIPARAMBIL, PERUMBALAM, POOCHAKKAL,
ALAPUZHA DISTRICT.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

RESPONDENTS: RESPONDENTS

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1. R.M.AGARWAL, 38, GURU NANAK NAGAR,
OFF. SHABKARSETH ROAD, PUNE - 411 042.

2. ANTONY, S/O.JOHN, HOUSE NO.62,
SYRIAN CHURCH ROAD, R.S.PURAM,
COIMBATORE.

3. THE ORIENTAL INSURANCE CO.LTD.,
REGIONAL MANAGER, COCHIN - 35.

R3 BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.33 of 2003

Dated, this the 20th day of November, 2007

JUDGMENT

The petitioner in O.P.(MV)No.1148/1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam is the appellant. The appellant filed Original Petition claiming compensation. It was alleged that the appellant met with an accident on 2.12.1995 and sustained injuries. It was averred that immediately after the accident she was taken to Medical Trust Hospital. It was alleged that the accident occurred due to the negligence of the second respondent driver. Respondents 1 and 2 did not contest. Third respondent insurer alone contested the matter. It was contended that there was no negligence on the part of the driver. Quantum of compensation claimed was disputed. But the existence of valid policy of insurance was admitted. When the case was posted for evidence the appellant and counsel were absent. So the Tribunal decided the case on the basis of the materials on record. Appellant produced a photocopy of the FIR. The Tribunal did not accept the same. Photocopy of the wound certificate produced was also not accepted. It was held that the appellant did not produce the wound certificate issued from the Government Hospital, Poothotta. Tribunal also held that without the material documents it is not possible to come to the conclusion that the appellant had sustained injury as a result of the use of the vehicle and dismissed the Original Petition.

2. Learned counsel appearing for the appellant submits that the appellant may be given one more opportunity to contest the matter on merits. I am also of the view that it is a fit case in which an opportunity can be afforded to the appellant to adduce evidence. For that purpose the case has to go back.

In the result, appeal is allowed. Award passed by the Tribunal dismissing the Original Petition is hereby set aside. Case is remanded to the Tribunal for fresh disposal in accordance with law. Tribunal is directed to take O.P.(MV) No.1148/1996 back to file and dispose of the same afresh in accordance with law. Parties shall appear before the Tribunal on 8.1.2008. Being an old case the Tribunal shall make every endeavour to dispose of the case as expeditiously as possible.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.33 of 2003

JUDGMENT

20th November, 2007.